

CHAPTER 5

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The substance abuse commission hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first Volume of the Iowa Administrative Code.

643—5.1(17A,22) Definitions. As used in this chapter:

"Agency" means the division of substance abuse and health promotion of the Iowa department of public health for purposes of records of substance abuse programs.

643—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. A request for access to a record should be directed to the Iowa Department of Public Health, Division of Substance Abuse, Lucas State Office Building, Des Moines, Iowa 50319-0075, Attention: Record Request. The division of substance abuse will forward the request to the appropriate person.

5.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays.

5.3(7) Fees.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this function.

643—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.

Substitute the phrase "the office in which the record is maintained" for "(designate office)."

643—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 5.10(17A,22) or in any notice for a particular record system.
- b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that the record is transferred in a form that does not identify the subject.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.
- e.* To the legislative fiscal bureau under Iowa Code section 2.52.
- f.* Disclosures in the course of employee disciplinary proceedings.

- g. In response to a court order or subpoena.

643—5.10(17A,22) Routine use.

5.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

5.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

643—5.11(17A,22) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.7(17A,22).

5.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official’s intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

5.11(3) *Obtaining information from a third party.* The agency may be required to obtain information to establish eligibility, determine the amount of assistance, provide services or other purposes necessary to the administration of a program. Requests to third parties for this information may involve the release of confidential identifying information about individuals. Except as provided in rule 5.10(17A,22), the agency may make these requests only when the individual has authorized the release on a division form designed for this purpose.

643—5.12(17A,22) Release to subject.

5.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 5.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provisions of law.

b. Records when they are the work product of an attorney or are otherwise privileged.

c. Peace officers’ investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

d. As otherwise authorized by law.

5.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

643—5.13(17A,22) Availability of records.

5.13(1) General. Agency records are open for public inspection and copying subject to supervision unless otherwise provided by rule or law.

The records open to the public include:

1. Records maintained by the grants and contracts section which include contracts and contract awards including standard contract conditions, special contract conditions, and contract revisions, with the exception of those records as defined in subrule 5.13(2). In addition, contracts review reports and all applicable correspondence are open.

2. Records maintained by the licensure section which include licensure reports, applications for licensure and certificates of license. Also maintained are technical assistance plans and reports and all relevant and pertinent correspondence.

3. Records maintained by the training section which include training and workshop participant lists, training consultant contracts and all relevant and pertinent correspondence.

4. Records maintained by the prevention section which include prevention contract review reports, prevention program technical assistance reports, and all relevant and pertinent correspondence.

5.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. The registration and other patient records of facilities pursuant to Iowa Code section 125.37(1).

b. Written reports by the division, information provided to or obtained by the division through complaints or investigations concerning any program pursuant to Iowa Code section 22.7.

c. Criminal history data disseminated and redisseminated pursuant to Iowa Code sections 692.2 and 692.3.

d. Applications for funding, and service rate-reimbursement records pursuant to Iowa Code section 22.7(6).

e. Minutes of closed meetings of a government body (Iowa Code section 21.5(4)) shall be kept confidential.

f. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“d.”

g. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3.)

h. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged shall be kept confidential. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

i. Records exempted from public inspection under any other provision of law shall be kept confidential.

5.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 5.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

643—5.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 5.1(17A,22) under “personally identifiable information” and “record systems.” For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information. A data processing system does not match, collate, or permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system, unless so indicated.

5.14(1) The record systems maintained by the agency are:

a. Records of substance abuse facilities reviews pursuant to Iowa Code section 125.13. These records are stored on paper.

b. The registration and other patient records of facilities shall remain confidential pursuant to Iowa Code section 125.37(1). These records are stored on paper.

c. Written reports by the division, information provided to or obtained by the division through complaints or investigations concerning any programs pursuant to Iowa Code section 22.7. These records are stored on paper.

d. Criminal history data disseminated and redisseminated pursuant to Iowa Code sections 692.2 and 692.3. These records are stored on paper.

643—5.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 5.1(17A,22). These records are routinely available to the public. However, the agency’s files of these records may contain confidential information. In addition, these records may contain information about individuals. All records are stored on paper unless otherwise noted.

5.15(1) Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4.

5.15(2) Council and commission records. Agendas, minutes, and materials presented to the councils, committees, and commissions listed below are available from the department, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Council and commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3.

5.15(3) Publications. News releases, annual reports, project reports, agency newsletters, etc., are available from the public information office and the division. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees.

5.15(4) Statistical reports. Periodic reports of statistical records are available from the division.

5.15(5) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 5.13(17A,22) or 5.14(17A,22). These records may contain information about individuals.

5.15(6) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

5.15(7) Policy manuals. Policy or program manuals of various programs may be obtained by contacting the program.

5.15(8) All other records that are not exempted from disclosure by law.

5.15(9) Other records used by the agency which may not otherwise be accounted for by these rules include correspondence files, surveys conducted by programs, information and data files, and records used for processing purposes internally (such as data processing and word processing requests, supply shipments, etc.). Some of these records may contain information about individuals. Correspondence files may contain confidential information protected by statutes cited in 5.13(17A,22) or 5.14(17A,22) of these rules.

5.15(10) Except where otherwise noted, data processing systems used by the agency do not permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

643—5.16(17A,22) Data processing systems. Except where otherwise noted, data processing systems used by the agency do not permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

643—5.17(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the rules of another agency.
4. Apply to grantees, including local governments or subdivisions, administering state-funded programs.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of records to the general public or to any subject individual or party to litigation or proceedings shall be governed by applicable constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

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